

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**GIT-N-GO CONVENIENCE
STORES, INC.**

UST NO. 198602854

**ADMINISTRATIVE
CONSENT ORDER
2012-UT- 01**

TO: Git-n-Go Convenience Stores, Inc.
Dennis Flora, President and Registered Agent
2716 Indianola Avenue
Des Moines, Iowa 50315-2399

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Git-n-Go Convenience Stores, Inc. (Git-n-Go) hereby agree to the following Administrative Consent Order (Order). For all of its Iowa facilities, Git-n-Go agrees to maintain inspection logs, conduct inspections of sumps and containment basins prior to and following fuel delivery, conduct monthly inspections of sumps and containment basins, test the adequacy of cathodic protection systems for protectiveness of system appurtenances, and install supplemental cathodic protection where needed and test such equipment as required. See Sections IV and V below for additional details.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Janet Gastineau
Iowa Department of Natural Resources
401 SW 7th Ste I
Des Moines, Iowa 50309
Ph: 515-725-0334

Relating to legal requirements:

Aaron Brees, Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515-281-5965
aaron.brees@dnr.iowa.gov

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II. JURISDICTION

This order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and 455B.476, which authorize the Director of the Department to issue any order necessary to secure compliance with Iowa Code chapter 455B, Division IV, Part 8 and Department rules contained in chapter 567 Iowa Administrative Code (IAC) 135. Iowa Code section 455B.109 and administrative rules in chapter 567 IAC 10 authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

The Department and Git-n-Go hereby agree to the following statement of facts:

1. Git-n-Go is the registered owner and/or operator of a facility containing one 6,000 gallon UST and one 10,500 gallon UST, located at 4900 Urbandale Avenue in Des Moines, Iowa. This facility is a convenience store engaged in the retail sale of gasoline.
2. On November 16, 2004, Bill Gross of Department Field Office #5 (FO5) conducted a routine inspection of the UST system and observed liquid and debris in the spill containment basins and water in the submersible turbine pump (STP) sumps.
3. On October 27, 2006, Brian Pottebaum of Petroleum Marketers Management Insurance Company (PMMIC) conducted a compliance inspection and observed liquid in both spill containment basins and STP sumps.
4. On July 25, 2007, Brian Pottebaum of PMMIC conducted a compliance inspection and observed liquid in both spill containment basins and STP sumps.
5. On April 15, 2008, Janet Gastineau of FO5 conducted a routine inspection and audit of a compliance inspection at this facility. The site's STP sumps contained a small amount of liquid and the spill containment basin for the 10,500 gallon tank was nearly full.
6. On April 28, 2008, a Notice of Violation (NOV) was issued to Git-n-Go for spill containment maintenance violations.
7. On June 22, 2009, Janet Gastineau conducted a follow up visit to the UST system. Monthly records of inspections of the basins and sumps were available. However, the north STP sump contained several inches of water and both spill containment basins contained liquid. The facility was encouraged to modify their current inspection schedule to ensure spill basins are clean before each delivery. The facility was also cautioned to keep water out of the STP sumps unless cathodic protection was in place.

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8. On August 25, 2009, Brian Pottebaum of PMMIC conducted a compliance inspection and observed water in the unleaded STP sump at such a level so as to prevent inspection, water in the other STP, and liquid in the super unleaded spill basin.
9. On April 28, 2010, Janet Gastineau visited the facility and observed a fuel/water mixture and debris in the south spill containment basin, and several inches of water in the north STP sump.
10. On May 12, 2010, the Department issued an NOV to Git-n-Go for the violations observed during the April 28, 2010 visit.
11. On October 27, 2010, the Department issued an NOV to Git-n-GO for spill containment maintenance violations observed by Janet Gastineau on October 19, 2010.
12. On February 14, 2011, Janet Gastineau visited the facility and observed fuel in the north spill basin. Drive plates for the STP sumps could not be removed for inspection.
13. On February 24, 2011, the Department issued an NOV to Git-n-Go for the violations observed during the February 14, 2011 visit.
14. On August 1, 2011, Janet Gastineau visited the facility and found nearly two inches of product in the north spill basin. The clerk reported no known inspection logs and fuel delivery due that day.
15. On August 5, 2011, the Department issued an NOV to Git-n-Go for the violations observed during the August 1, 2011 visit.

IV. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471-455B.479) establishes the Underground Storage Tank (UST) program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USTs constitutes a threat to the public health and safety and to the natural resources of the state, and this regulatory program is necessary to adequately address this concern. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, corrective action, and reporting and record keeping requirements applicable to all owners and operators of USTs. The Commission has adopted such rules in 567 IAC chapters 135 and 136.

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2. Iowa Code section 455B.471(6) defines an "owner" of USTs. Git-n-Go is an owner of USTs at the above referenced facility and has been at all times relevant to this Order.
3. Iowa Code section 455B.471(5) defines "operator" of USTs as "...a person in control of, or having responsibility for, the daily operation of the underground storage tank." Git-n-Go is an operator of the above referenced facility and has been at all times relevant to this Order.
4. 567 IAC 135.3(1)(c)(1)(1) requires owners and operators to use "[s]pill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin)" and 567 IAC 135.4(1)(a) states that "[o]wners and operators must ensure that releases due to spilling or overfilling do not occur." By failing to keep its catchment basins free of debris, water, and product, and by failing to consistently inspect its equipment, Git-n-Go has failed to ensure that its spill prevention equipment is capable of preventing a release of product to the environment due to spilling or overfilling as required.

V. ORDER

THEREFORE, the Department hereby orders and Git-n-Go agrees to the following:

1. Git-n-Go shall maintain inspection logs at all facilities in Iowa demonstrating compliance with the following:
 - (a) Inspection of spill containment basins before and after a fuel delivery. Spill containment basins must be empty of liquids and debris prior to delivery and fuel must be removed from them immediately after each delivery. Fuel/water mixtures must be properly disposed of.
 - (b) Conduct monthly inspections of each containment basin to remove any debris, and check for loose gaskets, cracks, corrosion, or other indications of spill containment failure.
 - (c) Conduct monthly inspections of all sumps and remove and properly dispose of any liquid they contain. If breaches are found in existing sumps, the necessary repair/replacement must be made.
2. Git-n-Go shall conduct tests at all Iowa facilities that have cathodic protection systems to determine whether these systems are providing effective protection for metal tank system appurtenances which routinely contain fuel and which cannot be kept isolated from soil and water. Metal tank appurtenances that are not adequately protected must be provided adequate corrosion protection by July 1, 2012. These appurtenances

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must be tested for corrosion protection within six months of installation of cathodic protection, and every three years thereafter.

3. For Iowa facilities that do not have cathodic protection systems, Git-n-Go shall inspect SIP and dispenser sumps and install cathodic protection (e.g., sacrificial anodes) to metal tank appurtenances which routinely contain fuel and which cannot be kept isolated from soil and water. This must be completed by July 1, 2012. These appurtenances must be tested for corrosion protection within six months of installation of cathodic protection, and every three years thereafter.

4. Git-n-Go shall submit a report to the Department by August 1, 2012 documenting its compliance with Section V, subsections 2 and 3 of this Order. This report shall include a summary of the test or inspection results for each facility, including a list of any deficiencies found and the actions taken to correct them.

VI. PENALTY

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code sections 455B.109 and 455B.476 authorize the Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See 567 IAC 10.

The Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order without a monetary penalty so long as Section V of this Order is complied with.

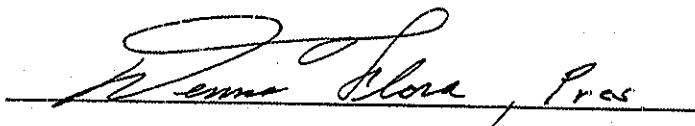
VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.476, and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Git-n-Go. By signing this Order all rights to appeal this Order are waived.

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VIII. NONCOMPLIANCE

Compliance with sections V.1 and V.2 of the Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.477.

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Dated this 13th day of March, 2012


ROGER L. LANDE, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 14th day of March, 2012